

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JENNILEE TOOHER,

For Online Publication Only

Plaintiff,

-against-

VILLAGE OF HEMPSTEAD, VILLAGE OF HEMPSTEAD
POLICE DEPARTMENT, VILLAGE OF HEMPSTEAD
POLICE CHIEF PAUL JOHNSON, VILLAGE OF
HEMPSTEAD POLICE OFFICER JACK GUEVREKIAN,
VILLAGE OF HEMPSTEAD POLICE OFFICER
JOHN DOES #1-5, INDIVIDUALLY,

ORDER

21-CV-4268 (JMA) (JMW)

**FILED
CLERK**

3:19 pm, Aug 09, 2023

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Defendants.

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AZRACK, United States District Judge:

Plaintiff commenced this action pursuant to 42 U.S.C. § 1983 on July 29, 2021. (ECF No.

1.) In a letter dated May 1, 2023, Plaintiff's counsel informed the Court that Plaintiff had died. (ECF No. 43.) On May 2, Magistrate Judge Wicks entered an order deeming that letter to be a suggestion of death under Federal Rule of Civil Procedure 25(a)(1). Judge Wicks further ordered that “[a] motion pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure to substitute deceased Plaintiff must be made within 90 days of the filing of the suggestion of death” and directed Plaintiff's counsel to serve a copy of the order on Ms. Tooher's family. Plaintiff's counsel complied and sent a copy of Judge Wicks's order to Theresa Rapp on May 8, 2023. To date, no motion for substitution has been filed and more than 90 days have elapsed since both May 2 and May 8.

Federal Rule of Civil Procedure 25(a)(1) provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party.” If a motion for substitution

“is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1).

Because no motion for substitution was made within 90 days, the Court hereby dismisses the instant action. The Clerk of Court is respectfully directed to enter judgment accordingly and to close this case.

SO ORDERED.

Dated: August 9, 2023
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE